



COMMUNITY DEVELOPMENT DEPARTMENT

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PLANNING COMMISSION MEETING MINUTES

REGULAR MEETING

FEBRUARY 27, 2007

PRESENT: Koepp-Baker, Benich, Davenport, Escobar, Lyle, Mueller

ABSENT: Acevedo, Davenport

LATE: None

STAFF: Planning Manager (PM) Rowe, and Minutes Clerk Johnson.

Chair Benich called the meeting to order at 7:01 p.m., inviting all present to join the pledge of allegiance to the flag.

DECLARATION OF POSTING OF AGENDA

Minutes Clerk Johnson certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

OPPORTUNITY FOR PUBLIC COMMENT

With no one present indicating a wish to address matters not appearing on the agenda, Chair Benich closed the public comment period.

MINUTES:

JANUARY 23, 2007 COMMISSIONERS MUELLER/KOEPP-BAKER MOTIONED TO APPROVE THE JANUARY 23, 2007 MINUTES WITH THE FOLLOWING REVISIONS:

Page 2, paragraph 7, line 5: ...~~units~~ *projects*...

Page 4, (Disclosure announcement) [clarification]: Commissioner Mueller spoke with Richard Oliver, not Rocke Garcia.

Page 5; paragraph 9, line 3, ~~two~~ *three*

Page 6; line 3 & 4 (Announcements):vertical mixed-use ~~units~~ *projects*

THE MOTION CARRIED (5-0-2) BY THE FOLLOWING VOTE: AYES: BENICH, KOEPP-BAKER, ESCOBAR, LYLE, MUELLER; NOES: NONE; ABSTAIN: NONE; ABSENT: ACEVEDO, DAVENPORT.

PLANNING COMMISSION MEETING MINUTES

February 27, 2007

PAGE 2

PUBLIC HEARING:

- 1) AMENDMENT TO DEVELOPMENT SCHEDULES FOR MEASURE C PROJECTS AND PROCEDURES FOR TRADING BUILDING ALLOTMENTS IN DIFFERENT FISCAL YEARS BETWEEN MEASURE C PROJECTS**
- A request to review the current standard Measure C project developments to extend interim (soft) and hard deadline dates. Also requested: Discussion on establishing procedures for ‘trading’ different fiscal year building allotments between projects.
- PM Rowe presented the staff report, noting the background:
- October, 2006 – Planning Commission adoption of policy allowing adoption of Development Schedules (Exhibit B) by Resolution
 - Previous to this policy developers requesting extension of deadlines, required amendment to the Development Agreement with additional hearings (before the Commission and ultimately the Council), and adoption of another Ordinance

PM Rowe explained that the proposed policy being offered at this meeting, and that the Development Agreement amendment steps for all on-going projects could be eliminated with the Development Schedule being adopted only by Resolution. PM Rowe indicated there would still be an Exhibit B with hard a deadline for commencement of construction no later than June 30th of the fiscal year of allocation award in each project’s Development Agreement and quarterly deadlines determined in a separate development schedule which would be approved by the Planning Commission.

The item before the Commissioners at this meeting had been targeted in response to applications from several developers asking to amend their projects for additional time to apply for or to obtain building permits. Now, PM Rowe said, the City is proposing to process these applications in one ‘batch’: A single hearing before the Planning Commission and the City Council. With this efficiency, PM Rowe explained, it will save the City resources time, with benefit to the Developers by reducing filing fees for amendment of their Development Agreements (removal of Exhibit B Development Schedule).

PM Rowe went on to clarify that the Planning Staff had – in an effort to assist in processing the ‘batch’ – developed a new Development Schedule ‘Template’ [presented in the distributed staff report] which would reduce the lead time required for developers to obtain building permits and delay the filing deadline for Site and Architectural approval until after the Tentative Map had been approved. He also explained the differences between the proposed and the current deadlines.

PM Rowe also stressed the proposed practice of Transfer of Allotments between projects, which has often been discussed as being attractive of both Measures C and F. PM Rowe called attention to the Staff Report, page 3, item 1: The transfer policy does ***not*** apply to the current fiscal year allotment (FY 2006-07) or to building allotments that were extended from the prior fiscal year (FY 05-06) into the current fiscal year, and the two following limits on transfer. This policy could help in having on-going projects completed more timely, which is long a wish of the City decision makers. To that end, PM Rowe said, the Commission was being asked to address these three questions:

1. Does the transfer policy also apply to partially allocated developments or only to projects that are fully allocated?

PLANNING COMMISSION MEETING MINUTES

February 27, 2007

PAGE 3

2. Does the transfer policy only apply to on-going projects or can recently allocated first time projects also transfer allotments?
3. Is it necessary to have all of the project entitlements in place (final map approval, building permit in plan check) to be eligible for the transfer of building allotments?

The Commissioners discussed the following items with PM Rowe:

- downtown developers do not want to accelerate their development schedules allowed under Measure F due to financing; limiting the possibility of trade
- at least two developers have asked for projects allocations for FY 2009-10 to be added to the project allocations for FY 2008-09
- useful to develop transfer policy now and revisit in 6 months to see how market responding to change
- number of the projects that received points for being on schedule; would not be eligible for points in next cycle
- redefining "under construction" to include the pouring of foundations
- might want to have alternative (later) date set to accept completion of off-site improvements (perhaps September 15)
- currently 14 allocated projects are behind schedule - some reflective of market conditions, some are small projects and require prodding by staff to get going'

Chair Benich opened the public hearing.

Dick Oliver spoke with the Commissioners, providing the following information:

- difficulty of deadlines as indicated: impossible the way it is now: must have map done and recorded and to have that all done by February (after competition date) a developer 'just can't get all the work done. Would have to start all improvements by July in order to get done'
- discussion of timeline (Commissioner Lyle)
- 'trading allocations' for on-going projects only. [He indicated he doesn't want to have to start improvements before there is a logical time to gain allocations/finish the project]
- with a target of June 30, five of his projects would be affected adversely
- issue of getting roads in 19 months following allocations [Mr. Oliver said this was 'doable']
- difficulties with proceeding in view of waiting for outside agency approvals from Santa Clara Valley Water District, Fish and Game, Fish and Wildlife (Mr. Oliver said he often has to wait for six months to get an answer from SCVWD, then must have an additional six months for proceeding with the project)

Commissioner Lyle stressed the City's intent: To have developers start allocated projects within the year the fiscal year of the allotment, and not wait until last minute. Mr. Oliver responded that if developers had a 'hard date', rather than force to reapply to Planning Commission and City Council, it would be beneficial to give Planning Staff the leeway and flexibility to make changes in the dates. Commissioner Mueller reminded that under the current policy, staff can do just that, subject to approval by the Planning Commission.

PLANNING COMMISSION MEETING MINUTES

February 27, 2007

PAGE 4

Discussion ensued regarding the requirement for hard dates in the Resolution. Mr. Oliver agreed that there should be a provision in the Resolution, with September for roads/on-site improvements, June for beginning construction, etc. Commissioner Mueller said the Planning Commission has control of all dates, which must be approved by Resolution, and stated he didn't see the need to send revisions to the Council. Commissioner Lyle spoke on the importance of not waiting until June 30 in the prior fiscal year for Subdivision and Zoning Applications.

PM Rowe emphasized that the prepared template can be revised and will be reviewed at additional public meetings, the first to be March 13, 2007 with the Planning Commission. Mr. Oliver indicated seeing problems with the current proposal, then spoke of recent difficulties of having the ARB review, due to lack of quorum. He also said that the soft deadline of seven months after submittal doesn't actually take seven months, but about three to four months at most. "The City staff is good with this, and the architects have been doing a good job. I can see the submittal building date of August 15 with no difficulty at all," Mr. Oliver said.

Brief discussion was had regarding the 'bottleneck' areas of the permit process.

Commission/Staff discussion with Mr. Oliver included:

- obtain building permit 1-31-09, with a hard deadline of 6-30-09 (unless developers come in to staff to explain need for extension, e.g., governmental agencies not responding timely, etc.). Continued concern regarding delay in soft deadline. Mr. Oliver first asked last October (2006)
- should be able to start construction the day after approval of building permit
- new school fees – this sudden unexpected raise in fees was not anticipated by the City nor developers
- difficulty with paying fees before 'begin construction' sometimes results in having to reapply at end of 6 months

Mr. Oliver said his banker wants a developer to have sold xx number before advancing monies; if the developer needs an extension, it would be foolish to start 30 houses and have to reapply. He went on to speak of the work for Mission Ranch (phase 9 a: under construction; phase 9 b: Improvements not done yet, but final map ready to go. Mr. Oliver also told of progress of work for Alicante Subdivision where he had to wait for County Parks and Recreation approval, stating that took five months. Mr. Oliver declared he was ready to pick up building permits and unless sales completely stop, he will pick them up. "We have tried diligently to be in compliance, and have submitted applications for extensions," he concluded.

Chair Benich asked Mr. Oliver to comment on the three questions contained within the staff report relating to the transfer policy. Mr. Oliver said he had not yet studied the questions, but would do so immediately.

John Telfer, 17045 Monterey Rd., spoke on behalf of DeNova and Jasper Park, which had been part of the Measure C competition two years ago. "We are pleased to hear you are considering swapping allocations – Jasper Park is a good example where such practice would work very well." Mr. Telfer told of the allocations received, the allocations needed, and where the projects were within the 'installation of infrastructure, indicating the developers of that project would be very interested in receiving allocations. "If any other developer would be interested in delaying, we

PLANNING COMMISSION MEETING MINUTES

February 27, 2007

PAGE 5

want to pick up the available allocations,” he said.

Responding to Commissioner questions, PM Rowe explained that Mr. Telfer believes he can complete all the allocations received for FY 2007-08 and is asking for the project’s remaining allocations (22 units) to be moved up to FY 2007-08.

Commissioner Mueller asked what this development was ‘doing different from the others?’ Mr. Telfer referenced different marketing efforts and pricing, and said the infrastructure had to be up-fronted. Responding to Chair Benich, Mr. Telfer said in Jasper Park, most of the improvements were in place, and he is able to use additional allocations.

Craig Miott, 2532 Santa Clara Ave., Alameda, was present representing Syncon Homes. Mr. Miott indicated he had studied the questions in the staff report and responded:

1) yes

2) yes

3) With the Downtown Projects, there is not enough expertise of developers, and it could be difficult to achieve earlier start dates. Mr. Miott said, responding to Commissioner Lyle, that he would favor moving his project’s FY 2009-10 allocations to FY 2008-09.

Chair Benich referenced the proposed template, and noted that Commissioner Lyle had suggested an additional hard date (building permit submittal) be added, which would cause the dates to be set later (August 15). Mr. Miott said that to-date he hadn’t had difficulty meeting deadlines, and so was uncertain as to how well this proposal might work.

PM Rowe, reminded again this matter would be returned to the Commission on March 13, and then again in 4 weeks time, which would provide time for the builders and developers to peruse the proposal. PM Rowe also spoke on the proposed reduced fee.

Bill McClintock, MH Engineering, told the Commissioners he wished to speak to the *point system* – and strongly suggested that the practice be of making up points given at the time of allocation, based on what the developer does to meet the schedule, but not on the new schedule. “I don’t think points should be made up if it is a continuing project, instead not be given points in the next completion,” Mr. McClintock said. He also spoke in opposition to ‘hard deadlines, especially if building roads, etc., saying such action is a ‘bad idea’, noting the sequence and difficulty of installing paved roads and finished streets. Mr. McClintock stressed the importance of keeping people who are not serious about building, but who get allocations, and are actually speculators, who wait for the price to go up before filing a tentative map as the application/filing fee represents significant dollars. “If you want to set a hard deadline, it should be the tentative map submittal,” he said. “Have you considered putting a requirement in the scoring for giving extra points for allocation with builders, so there is less chance of changing plans?” Commissioner Lyle recalled such a requirement had been touted; ‘did try, but didn’t fly’.

Discussion followed regarding the process of pulling permits. Commissioner Lyle gave an overview of the evolution of pulling permits under Measures E, P, and now

PLANNING COMMISSION MEETING MINUTES

February 27, 2007

PAGE 6

Measure F, lamenting the fact that even though the allocations are now awarded earlier, that the projects were not started timely. Mr. McClintock stated, "It would be beneficial to have to file tentative maps, and if it is a good project, then give allocations."

The Commissioners pointed out that a review process is needed. Beginning times for projects in the second and third years of allocation was discussed.

As to the transfer policy, Commissioner Mueller stressed, "In a transfer, there must be a two-party agreement: One person giving, another receiving. If a developer receives allocations in a transfer, it must be done timely and can depend on how many allocations can be handled." Mr. McClintock said, "Clearly, on-going projects that have infrastructure in place should have some precedence. It may also be necessary to think about the need, to look at the market, what could be sold, and how rapidly." Commissioner Mueller said, "When we are talking about transfer, we need complete answers."

Gary Walton, PO Box 1265, Morgan Hill, was present to speak to Ginger-Custom One, a five-unit project he has been 'trying to get wrapped up'. Mr. Walton declared it to be difficult to get 'anything done' – and cited being held up by PG&E for six months. Mr. Walton acknowledged that he has applied for a Development Agreement Amendment (PM Rowe advised Mr. Walton is requesting to commence construction February, 2008) and lamented that a plan check is only good for so long. He said he has intent to go ahead and do the project with hopes to submit this week, adding, "I wanted to let you know there are problems in the system. We can live with the update for the building plans being done, but it does not make sense to submit and wait and wait." Responding to a question from the Chair regarding the potential for establishing a second hard deadline, Mr. Walton said bigger projects could probably benefit. He also indicated that regarding the questions, he expected no difficulty with #1 and said that he felt reciprocal transfers would be 'OK'.

Discussion turned to the possibility of permitting transfers (albeit perhaps more complicated) only to on-going projects. The Commissioners acknowledged struggling with giving more allocations to new projects that haven't done anything and said there may be need to demonstrate 'ability for action'.

Mr. Oliver addressed the Commissioners again, speaking on having a vesting tentative map in place, explaining he did actually receive allocations from an abandoned project, then was able to record and start by June 30. As to the third question, Mr. Oliver said if the start date was in February, it would probably be extremely difficult for developers to get improvements in due to inclement weather. Commissioner Mueller clarified that on the basis of testimony received; the problem is the time between July and the end of the year. Mr. Oliver suggested alternative final map submittal at the end of September or into October; units might be given up to be absorbed by other project with this filing deadline for final map. Commissioner Lyle asked if builder discretion instead of Planning Commission discretion was being suggested for the transfer(s). Commissioner Mueller suggested that the transfer could be completed in February or March if the receiving developer has a vesting tentative map, and can file timely. He also recommended the following condition: The receiving project must be in position to act – and suggested such action might be developer initiated. Commissioner Mueller said, "In general, if a developer has the

PLANNING COMMISSION MEETING MINUTES

February 27, 2007

PAGE 7

ability to file a vesting tentative map, the transfer would be ok', while he recognized new projects might not be best suited for receiving the transfer.

PM Rowe referenced the Template as he asked for direction on moving Building Permit Submittal from 5-15 to 8-15 with a shorter interval between Obtain Building Permit and Commence Construction. Commissioner Lyle suggested replacing 1-31 (Obtain Building Permit) with 3-31 and targeting everyone for starting at the end of the *fiscal* year.

Subsequent discussion revealed some preference for Commence Construction as 4-30 and 'drop dead' at 6-30. Commissioner Mueller noted the 'tricky part is in determining the current market, and financing needs,

With no others to speak to the matter, Chair Benich closed the public hearing.

The Commissioners engaged in discussion regarding:

- date changes for the Development Schedule Template:
 - Building permit submittal 08-15-2008
 - Obtain building permits 03-31-2009
 - Commence Construction 06-30-2009
- solid target dates if miss one, not have to go all way to City Council
- need to tie 'solid dates to something' (some phase of the permit process)
- need to look at strength of housing market
- utilizing this schedule for the first year, reevaluate during the next six months, with flexibility for subsequent years (strive to do something better)

Commissioner Lyle talked about if an ELBA is required for a project, the Planning Commission should have the option of moving, not only the fiscal year concerned with the ELBA, but some or all of the units the project already has allocated for future years. For example, if a FY 2007/08 allotment needs an extension and the project also has FY 2008/09 allotments, then the Planning Commission should also be able to push out the FY 2008/09 allotments. The burden of proof should be on the developer to show that the future allotments should not also be moved out. The Planning Commission might possibly move some allotments from FY 2009/10 into the FY 2010/11 unallocated year, and award the FY 2009/10 units to a partially allocated project.

Commissioner Escobar clarified such action would: Establish latitude to the way developers accomplish deadline goals.

Commissioner Mueller reiterated an earlier statement: The transfer system is a two-way street >> every time allocations are changed, there must be a sender and a receiver.

Commissioner Escobar spoke to the possibility of putting 'some of the onus on the developer'. "As part of the process, they should be able to identify upcoming changes and the need for the transfer to commence," he said.

Commissioner Mueller added that when considering receiving allocations, several elements must be considered, but in final analysis, financing must be considered first.

PLANNING COMMISSION MEETING MINUTES

February 27, 2007

PAGE 8

Commissioner Escobar responded, "The developers are people who are aware of the financials and probably have the greatest capability to do so."

Commissioner Lyle said a concern might be: If a developer is experiencing problems in one year, s/he might not be interested in having both years *pushed* out.

The Commissioners agreed by general consensus that the transfer policy should not apply to starting new projects, but efforts made to ensure that on-going projects received the transfers.

Commissioner Mueller suggested that key questions in a transfer program could be clarified by identifying the need for a vesting tentative map.

Based on the discussion, PM Rowe said staff will work on adding a performance measure deadline in September or October.

Responding to a request, Chair Benich reopened the public hearing.

Mr. Oliver suggested looking at question 3 in view of the issue of the final map submittal as a developer must achieve this benchmark before bonds are available. He said a possibility would be to set that deadline (final map submittal) for October.

No further comments were received; Chair Benich closed the public hearing.

Changes for multi-year project with some movement of dates (forward) were discussed.

A reminder was given that at the next Commission meeting, dates for subsequent years would be presented. **Staff was directed to incorporate the discussion(s) of this meeting into the report for Planning Commission meeting of March 13, 2007.**

PM Rowe said there was no City Council actions resultant from Commission action/recommendation.

ANNOUNCEMENTS:

Chair Benich said he felt it important to keep pressure on CalTrans regarding the issue of requirement of cyclone fencing at the freeway. PM Rowe said a report would be made at the next meeting.

ADJOURNMENT:

As there was no further business to come before the Commissioners at this meeting, Chair Benich adjourned the meeting at 8:45 p.m.

MINUTES PREPARED BY:

JUDI H. JOHNSON, Minutes Clerk